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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,373	11/03/2003	Dwayne Henry	85162-202 RWD	1135

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ADE & COMPANY  
1700-360 MAIN STREET  
WINNIPEG, MB R3C3Z3  
CANADA

EXAMINER
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SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/698,373

**Applicant(s)**

HENRY, DWAYNE

**Examiner**

Jon A Szumny

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

This is the first office action for application number 10/698,373, Holder for Grease Gun, filed on November 3, 2003.

*Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a holder for a grease gun, classified in class 248, subclass 311.3.
- II. Claims 11-20, drawn to a method of storing a grease gun, classified in class 222, subclass 180.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed could be used with any number of cylindrical devices, and does not necessarily need to be a grease gun.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ryan Dupuis on April 14, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears the applicant is intending positively recite the grease gun; however, the grease gun was merely *functionally* recited in the preamble of claim 1 ("for a grease gun"). The applicant must make it clear whether the grease gun is positively or merely functionally recited in claim 9. For the purposes of this office action, the Examiner will assume the grease gun is merely *functionally* recited.

*Specification*

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the abstract, line 1, "is provided" should be removed.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent number 5,040,756 to Via Cava.

Via Cava '756 discloses a holder (figure 2) comprising a wall mount (20,38) and a clip device (34,36, it is inherently a "clip" device since a "clip" is defined in Merriam Webster's Collegiate Dictionary - 10<sup>th</sup> Edition as "any of various devices that grip, clasp...") mounted on the wall mount, wherein there is provided a tray (28) supported on the wall mount below the clip device, wherein there is provided a holder (30,32) inherently for a nozzle supported on the wall mount, wherein the clip device is spaced outwardly from the wall mount and wherein the holder for a nozzle is located directly adjacent the wall mount, wherein the tray is supported below the holder for a nozzle in respective vertical alignment with each of the holder for a nozzle and the clip device, wherein the holder for a nozzle comprises a cradle, wherein the holder of Via Cava '756 can inherently perform all claimed functions.

Claims 1-3 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent number 3,224,644 to Davis.

Davis '644 discloses a holder (figure 2) comprising a wall mount (15) and a clip device (20,21) mounted on the wall mount, wherein there is provided a tray (24) supported on the wall mount below the clip device, wherein the tray includes side walls (26, left and right sides) to form a receptacle, wherein the clip device comprises a pair of flanges spaced apart from one

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another to define a spring clip (column 2, lines 22-23), wherein the pair of flanges include a concave interior profile that could inherently conform to a shape of a body of a grease gun, wherein the wall mount comprises a plate having mounting apertures (16,17) which support the clip device at one end and the tray projecting outwardly from the plate at an opposite end from the clip device, wherein the holder of Davis '644 can inherently perform all claimed functions.

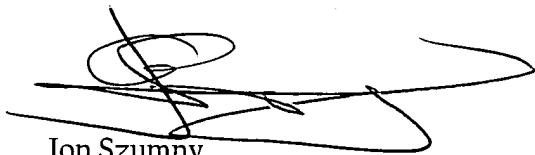
### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hain '720, Pagliaro '776, Mok '360, Ziaylek, Jr. et al. '714, Ho '634 and Isenga et al. '508 teach various holders including mounts, clip devices, trays and holders.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (571) 272-6824. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3600.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a large, stylized flourish extending from the end of the signature.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
April 14, 2005